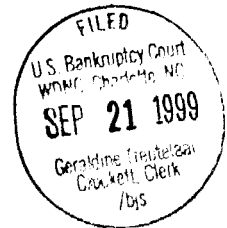


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION



IN RE:

WILLIAM DAVID HARBIN,

Debtor.

Bankruptcy No. 98-50418
(Chapter 7)

~~RECEIVED~~ SEP 21 1999

SHARON HARBIN,

Plaintiff,

Adv. No. 98-5046

VS.

WILLIAM HARBIN,

Defendant.

ORDER DETERMINING DISCHARGEABILITY OF DEBTS

This matter came before the Court on September 8, 1999 for trial. The complaint in the adversary sought a determination of the dischargeability of certain debts owed by the Debtor, William Harbin, to his ex-wife, Sharon Harbin ("S. Harbin") under a divorce judgment. The divorce was granted March 5, 1997 by the District Eight Court, Division of Southern Androscoggin, State of Maine. At the trial, the parties in this action asked the Court to interpret the divorce decree to determine what provisions constitute alimony, maintenance and support obligations. These types of payments are nondischargeable under 11 U.S.C. § 523(a)(5). The parties agreed that whether any such debts are owed, and the amounts thereof, are

reserved to a future hearing in state court.¹

LEGAL DISCUSSION

An individual debtor is not discharged from a debt "owed to a spouse, former spouse or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record." 11 U.S.C. § 523(a)(5).² Under this section, the analysis begins with a presumption that discharge is favored, "unless the complaining spouse, who has the burden of proof, demonstrates that the obligation at issue is actually in the nature of alimony, maintenance or support." Tilley v. Jessee, 789 F.2d 1074, 1077 (4th Cir. 1986). These obligations are commonly referred to as "AMS debts." While domestic obligations arise under state law, federal law determines whether those debts are dischargeable in bankruptcy. Long v. West, 794 F.2d 928, 930 (4th Cir. 1986).

¹ Except as against the bankruptcy estate. However, it appears that this is a no asset case.

² The full text of § 523(a)(5) reads:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt —

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that —

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

Standard of Applicable Law

In this Circuit, whether or not a domestic debt is nondischargeable as an AMS debt turns upon its nature and the shared intent of the parties at the time the domestic debts were created. Tilley, 789 F.2d at 1077. Courts usually employ a multiple factor analysis to deduce nature and intent, considering the titles used in the agreements, Long, 794 F.2d at 930; Catron v. Catron, 164 B.R. 912 (E.D. Va. 1994), whether the obligation is separately classified in the document from other types of debts, Tilley, 789 F.2d at 1077, whether the obligations terminate on remarriage, Id. at 1078, n.3; In re Altavilla, 40 B.R. 938 (Bankr. Mass. 1984), whether they are modifiable, and how they are treated by the parties for tax purposes, In re Sternberg, 85 F.3d 1400 (9th Cir. 1996). However, when the intent of the parties is so unambiguous that true intent is readily ascertained, it is unnecessary to use a strict factors analysis. Cross v. Cross, 175 B.R. 38, 41 (Bankr. D.N.D. 1994). "Any other rule would effectively turn a bankruptcy court into a court of domestic relations." Id.

In this case, the parties appear to both believe that the intent of the divorce judgment can be interpreted without the presentation of any factual evidence. The parties seek an interpretation of the state divorce judgment, as a matter of law, to determine what provisions, if any, are dischargeable.

It should be noted that the plaintiff alternatively argued

that the debts should not be discharged under 11 U.S.C. § 523(a)(15).³ The plaintiff was unable to attend the hearing due to financial problems, and could not introduce the needed factual evidence to carry her burden of proof on the § 523(a)(15) claim. Therefore, this section will not be considered in analyzing the divorce decree.

Categories of Debt Owed Under the Divorce Judgment

The categories of debt at issue in this case include: (1) parochial school tuition payments for the parties' minor child, Ashley S. Harbin; (2) mortgage payments on the family home, which was to be sold pursuant to the divorce judgment; (3) attorney's fees; (4) an unidentified debt owed to the St. Croix Credit Union; and (5) tax return money garnished from S. Harbin for a joint IRS tax debt.

The divorce judgment is divided into separate paragraphs, which address the different categories of debt. Paragraph I deals with the marital real estate, which consists of "land and buildings

³ The full text of § 523(a)(15) reads as follows:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt —

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless --

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

located at 56 Scribner Boulevard, Lewiston, Maine." The state court ordered that the house be sold as soon as possible, and prescribed the order of distribution of the proceeds. The St. Croix Credit Union debt and the IRS tax refund are located in this paragraph.

Paragraph II addresses ~~the~~ parental rights and responsibilities. Any child support obligations listed in the divorce judgment are clearly non-dischargeable under § 523(a)(5). The parochial school debt appears in this paragraph.

Paragraph III is labeled "marital debt." It lists the Debtor's responsibilities with regard to joint debt, and also provides that the Debtor is to pay \$100.00 per week to S. Harbin to be applied to the mortgages on the house until the house was sold.

Paragraph IV deals with alimony. This paragraph specifically refers to Paragraph III, and says: "Until [debtor's] financial obligations owed to [S. Harbin] pursuant to Paragraph III of this Judgment are satisfied in full, [debtor] shall pay to [S. Harbin] the sum of \$1.00 per year as and for alimony." The undersigned interprets this paragraph to mean that the marital debts listed under Paragraph III, which would normally constitute a property settlement, and therefore be dischargeable, are really in the nature of alimony until the time that the marital debt was satisfied. Paragraph five refers to the attorney's fee award.

The St. Croix and IRS Tax Refund Debts

The divorce judgment lists a debt owed to St. Croix Credit Union in the amount of \$4,151.57. The reason for this debt is unknown. It appears to be non-mortgage debt, because the second

mortgage on the home, also owed to St. Croix Credit Union, is dispensed with by the first line item in the order of distribution of the home sale proceeds. The other debt listed to be paid off by the sale proceeds is a \$1,672.00 debt owed to S. Harbin, which was a joint IRS debt that was paid by S. Harbin alone, through the garnishment of her income tax refund.

The Court finds that these debts are in the nature of a property settlement and are dischargeable. Property settlements are excluded from § 523(a)(5) and are dischargeable unless the test under 11 U.S.C. § 523(a)(15) is met. As discussed above, the plaintiff failed to meet her burden under this section. Therefore, there is no evidence that these debts should not be dischargeable.

Parochial School Debt

The debt owed under Paragraph II of the divorce judgment is for one half of the parochial school expenses incurred by S. Harbin on behalf of their minor child, Ashley S. Harbin. This type of debt is clearly non-dischargeable under § 523(a)(5), because it is a debt owed to the child of the Debtor for support and maintenance. The Debtor argued that the child is no longer in parochial school, however, that is an issue to be addressed by the state court. This court is simply ruling that the parochial school debt category is nondischargeable.

Marital Debts Owed as Alimony

The provisions under Paragraph III, specifically the \$100.00 per week payment, facially appear to be in the nature of a property settlement, which would be dischargeable upon the record before

this court. However, because those debts are cross referenced into the alimony paragraph (Paragraph IV), they take on the nature of an alimony payment. The \$100.00 per week payment was to be applied to the mortgages on the family home prior to its sale. The house was never sold, instead the mortgage payments were not made and the house went into foreclosure. Because the Debtor's share of the mortgage payments were in the nature of alimony, one half of any deficiency that may be owing on the house is also in the nature of alimony. Any payments made by S. Harbin towards the mortgage or any deficiency upon which the Debtor owes half, as alimony, are nondischargeable in his bankruptcy case. However, if the deficiency is not a personal liability under state law, then it is not an alimony debt, and it is dischargeable.

Attorney's Fees

The attorney's fees award is nondischargeable. The national trend is to view attorney's fees granted as part of domestic litigation as "in the nature of support." Silansky v. Brodsky, Greenblatt & Rehenan, 897 F.2d 743, 744 (4th Cir. 1990); In re Peters, 964 F.2d 166 (2d Cir. 1992); In re Miller, 55 F.3d 1487 (10th Cir. 1995); In re Josephs, 16 F.3d 86 (5th Cir. 1994); In re Kline, 65 F.3d 749 (8th Cir. 1995). Because there is no way to divide out the attorney's fees award between those incurred to obtain AMS payments and those incurred to obtain property settlement payments, the entire amount is assumed to be in the nature of support and is nondischargeable.

Effect of Discharge

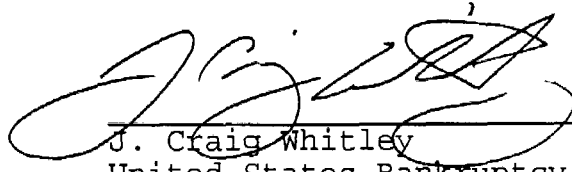
It should be noted that this Court is not making a determination of what effect the discharge of the property settlement debts through the Debtor's bankruptcy will have on any subsequent state court domestic proceedings. Other courts have held that discharging such obligations may justify relief to the non-filing party. For example, in the Ninth Circuit, it has been held that a bankruptcy discharge of property settlement debts justifies an upward modification of alimony under state law and that this does not violate the debtors' bankruptcy discharge. Siragusa v. Siragusa, 843 P.2d 807, 812-813 (Nev. 1992); In re Siragusa, 27 F.3d 406, 408-9 (9th Cir. 1994).

This court expresses no opinion on this subject. This court is only determining the nature of the various debts owed under the divorce judgment for discharge purposes. It is left to the Maine State Court to determine in the domestic action whether any such debts exist and their amounts.

WHEREFORE, IT IS ORDERED:

1. The St. Croix debt of \$4,151.57, which was to be paid out of the proceeds of the house sale is **DISCHARGEABLE**;
2. The IRS debt of \$1,672.00, owed to Sharon Harbin, is **DISCHARGEABLE**;
3. The parochial school tuition is **NONDISCHARGEABLE**;
4. The attorney's fees in the amount of \$750.00 are **NONDISCHARGEABLE**; and

5. The mortgage arrearage, if any, that is a joint liability of William and Sharon Harbin, is **NONDISCHARGEABLE**.



J. Craig Whitley
United States Bankruptcy Judge